

## YOUNG CONAWAY STARGATT & TAYLOR, LLP

BEN T. CASTLE  
SHELDON N. SANDLER  
RICHARD A. LEVINE  
RICHARD A. ZAPPA  
FREDERICK W. IOBST  
RICHARD H. MORSE  
DAVID C. MCBRIDE  
JOSEPH M. NICHOLSON  
CRAIG A. KARSNITZ  
BARRY M. WILLOUGHBY  
JOSY W. INGERSOLL  
ANTHONY G. FLYNN  
JEROME K. GROSSMAN  
EUGENE A. DIPRINZIO  
JAMES L. PATTON, JR.  
ROBERT L. THOMAS  
WILLIAM D. JOHNSTON  
TIMOTHY J. SNYDER  
BRUCE L. SILVERSTEIN  
WILLIAM W. BOWSER  
LARRY J. TARABICOS  
RICHARD A. DILIBERTO, JR.  
MELANIE K. SHARP  
CASSANDRA F. ROBERTS  
RICHARD J.A. POPPER  
TERESA A. CHEEK

NEILLI MULLEN WALSH  
JANET Z. CHARLTON  
ROBERT S. BRADY  
JOEL A. WAITE  
BRENT C. SHAFFER  
DANIEL P. JOHNSON  
CRAIG D. GREAR  
TIMOTHY JAY HOUSEAL  
MARTIN S. LESSNER  
PAULINE K. MORGAN  
C. BARR FLINN  
NATALIE WOLF  
LISA B. GOODMAN  
JOHN W. SHAW  
JAMES P. HUGHES, JR.  
EDWIN J. HARRON  
MICHAEL R. NESTOR  
MAUREEN D. LUKE  
ROLIN P. BISSELL  
SCOTT A. HOLT  
JOHN T. DORSEY  
M. BLAKE CLEARY  
CHRISTIAN DOUGLAS WRIGHT  
DANIELLE GIBBS  
JOHN J. PASCHETTO  
NORMAN M. POWELL

THE BRANDYWINE BUILDING  
1000 WEST STREET, 17TH FLOOR  
WILMINGTON, DELAWARE 19801

P.O. Box 391  
WILMINGTON, DELAWARE 19899-0391

(302) 571-6600  
(800) 253-2234 (DE ONLY)  
FAX: (302) 571-1253

110 WEST PINE STREET  
P.O. Box 594  
GEORGETOWN, DELAWARE 19947

(302) 856-3571  
(800) 255-2234 (DE ONLY)  
FAX: (302) 856-9338

WWW.YOUNGCONAWAY.COM

DIRECT DIAL: (302) 571-6681  
DIRECT FAX: (302) 576-3333  
msharp@ycst.com

LISA A. ARMSTRONG  
GREGORY J. BABCOCK  
JOSEPH M. BARRY  
SEAN M. BEACH  
DONALD J. BOWMAN, JR.  
TIMOTHY P. CAIRNS  
KARA HAMMOND COYLE  
MARGARET M. DiBIANCA  
MARY F. DUGAN  
ERIN EDWARDS  
KENNETH J. ENOS  
IAN S. FREDERICKS  
JAMES J. GALLAGHER  
SEAN T. GREECHER  
STEPHANIE L. HANSEN  
DAWN M. JONES  
RICHARD S. JULIE  
KAREN E. KELLER  
JENNIFER M. KINKUS  
EDWARD J. KOSMOWSKI  
JOHN C. KUFFEL

SPECIAL COUNSEL  
JOHN D. MCLAUGHLIN, JR.  
ELENA C. NORMAN  
KAREN L. PASCALE  
PATRICIA A. WIDDOSS

KAREN LANTZ  
TIMOTHY E. LENGKEEK  
ANDREW A. LUNDGREN  
MATTHEW B. LUNN  
JOSEPH A. MALFITANO  
ADRIA B. MARTINELLI  
MICHAEL W. MCDERMOTT  
MARIBETH L. MINELLA  
EDMON L. MORTON  
D. FON MUTTAMARA-WALKER  
JENNIFER R. NOEL  
ADAM W. POFF  
SETH J. REIDENBERG  
KRISTEN R. SALVATORE (PA ONLY)  
MICHELE SHERRETTA  
MONTÉ T. SQUIRE  
MICHAEL P. STAFFORD  
CHAD S.C. STOVER (SC ONLY)  
JOHN E. TRACEY  
MARGARET B. WHITEMAN  
SHARON M. ZIEG

SENIOR COUNSEL  
CURTIS J. CROWTHER

OF COUNSEL  
BRUCE M. STARGATT  
STUART B. YOUNG  
EDWARD B. MAXWELL, 2ND

July 13, 2006

### VIA E-FILING

The Honorable Gregory M. Sleet  
United States District Court  
844 North King Street  
Lock Box 19  
Wilmington, DE 19801

Re: Abbott Diabetes Care, Inc. v. DexCom, Inc.  
C.A. No. 05-590-GMS

Dear Judge Sleet:

The parties jointly and respectfully request that the dates for the trial in this case be continued for four months, with the remaining dates extended correspondingly, subject to the Court's schedule and approval. The parties' request stems from the amended complaint filed by Abbott on June 27 asserting three new patents, in addition to the four patents originally in suit. The parties agree that in making this request, they are not in any way prejudicing or waiving their rights concerning any matters in dispute.

Under the current schedule, the parties' opening claim construction briefs are due August 10, answering claim construction briefs are due August 31 and the Markman Hearing is set for October 24, 2006. Fact discovery ends November 3, 2006; trial is set for October 9, 2007. (A copy of the Scheduling Order (D.I. 31) signed March 10, 2006 is attached for the Court's convenience.) With the recent addition of new patents, Dexcom believes it is necessary, and Abbott believes it will be helpful, to have the additional time in the case, particularly for completion of the claim construction process in an orderly and efficient manner for the parties and, we submit, the Court. The additional time would provide Dexcom with sufficient time to study the new patents in advance of claim construction and, at the same time, the parties agree that it would be most efficient for claim construction for all patents in the case to proceed on one schedule. The additional four months would also provide time for the parties to take discovery related to the newly added patents.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

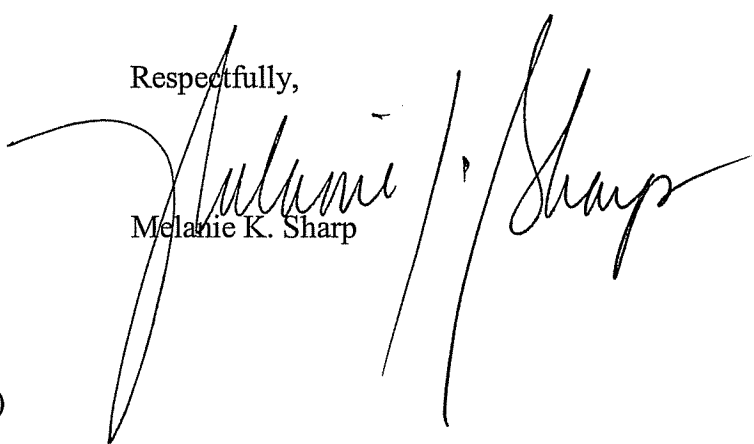
The Honorable Gregory M. Sleet

July 13, 2006

Page 2

The parties therefore jointly request a telephonic scheduling conference at the Court's earliest convenience to discuss (1) extending the current scheduling order, (2) setting a new Markman hearing date, and (3) setting a new trial date consistent with the parties' agreement and the Court's schedule. The parties are comfortable that if the court grants a new Markman hearing date and trial date, we will promptly be in a position to submit to Your Honor a stipulation and amended scheduling order including interim dates separated by intervals similar to those in the existing scheduling order.

Respectfully,

  
Melanie K. Sharp

MKS:bele

Enclosure

cc: Mary B. Graham, Esquire (by email)  
David C. Doyle, Esquire (by email)

65034.1/101

Fanning, Shannon

From: ded\_nefreply@ded.uscourts.gov  
Sent: Wednesday, March 08, 2006 6:21 PM  
To: ded\_ecf@ded.uscourts.gov  
Subject: Activity in Case 1:05-cv-00590-GMS Abbott Diabetes Care Inc. v. DexCom Inc. "Letter"

\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Graham, Mary entered on 3/8/2006 at 6:20 PM EST and filed on 3/8/2006

**Case Name:** Abbott Diabetes Care Inc. v. DexCom Inc.

**Case Number:** 1:05-cv-590

**Filer:**

**Document Number:** 31

**Docket Text:**

Letter to The Honorable Gregory M. Sleet from Mary B. Graham regarding enclosure of proposed scheduling order and chart of dates. (Attachments: # (1) Text of Proposed Order Scheduling Order# (2) Exhibit Chart of Dates)(Graham, Mary)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1079733196 [Date=3/8/2006] [FileNumber=180819-0]  
[9bb5ac0e6e97f9d442db251b89662a70502fbe2873657de5fc3b97ca6822b33eb127f  
81f917cea51aa941445291f1a24f82f97a2da4074899dac17ac76069397]]

**Document description:**Text of Proposed Order Scheduling Order

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1079733196 [Date=3/8/2006] [FileNumber=180819-1]  
[279eacc3c738f0bc570f9610a07f070f5e39b55534a988a5280f077daa62ef747aa34  
cc9768bbc8ec28c03fd0d95a6dbe08d799aa17486e92d7338808fa3d78e]]

**Document description:**Exhibit Chart of Dates

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1079733196 [Date=3/8/2006] [FileNumber=180819-2]  
[9845c9133a31bbadb8d948907c34cde35f405f359ca2c1ae842fd9ae62aebc2956e90  
df4b36b8e3d0e921ab18642b9d0edd1cd22c07d5e7ac623132145152960]]

3/9/2006

**1:05-cv-590 Notice will be electronically mailed to:**

Morgan S. Adessa madessa@mofo.com,

David C. Doyle ddoyle@mofo.com,

Mary B. Graham mbgefiling@mnat.com

James F. Hurst jhurst@winston.com

Brian M. Kramer bkramer@mofo.com,

Stephanie S. McCallum smccallum@winston.com

John W. Shaw jshaw@ycst.com, corporate@ycst.com; ptorterotot@ycst.com; corpcal@ycst.com

M. Andrew Woodmansee mawoodmansee@mofo.com,

**1:05-cv-590 Notice will be delivered by other means to:**

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET  
P.O. Box 1347  
WILMINGTON, DELAWARE 19899-1347

302 658 9200  
302 658 3989 FAX

MARY B. GRAHAM  
(302) 351-9199  
mgram@mnat.com

March 8, 2006

**VIA E-FILING AND HAND DELIVERY**

The Honorable Gregory M. Sleet  
United States District Court  
844 N. King Street  
Wilmington, DE 19801

Re: Abbott Diabetes Care, Inc. v. DexCom, Inc.  
C.A. No. 05-590 (GMS)

Dear Judge Sleet:

Enclosed is a proposed form of scheduling order (Exhibit 1) that reflects the dates set at the scheduling conference, and the further dates agreed to by the parties. For the convenience of the Court and parties, attached also is a chart reflecting all dates (Exhibit 2).

Respectfully,

*/s/ Mary B. Graham (#2256)*

Mary B. Graham

MBG/dam

Enclosures

cc: Dr. Peter T. Dalleo, Clerk (via hand delivery and e-filing)  
John W. Shaw, Esquire (via hand delivery and e-filing)  
David C. Doyle, Esquire (via facsimile)  
James F. Hurst, Esquire

510266

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABBOTT DIABETES CARE, INC., a  
Delaware corporation,

Plaintiff,

v.

DEXCOM, INC., a Delaware corporation,

Defendant.

C. A. No. 05-590 (GMS)

**SCHEDULING ORDER [PATENT]**

This \_\_\_\_ day of \_\_\_\_\_ 2006, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on February 23, 2006, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before March 14, 2006.
2. **Joinder of Other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before July 14, 2006.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiff whether it intends to rely upon advice of counsel as a defense to willful infringement no later than two (2) weeks following the Court's ruling on claim construction. If defendant elects to rely on advice of counsel as a defense to willful infringement, defendant shall produce any such

opinions on which defendant intends to rely to plaintiff no later than two (2) weeks following the Court's ruling on claim construction.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on October 24, 2006 at 10:00 a.m. The *Markman* hearing is scheduled for one day (\_\_\_\_\_ hours with each side having \_\_\_\_\_ hours). The parties shall exchange lists of disputed claim terms on or before June 26, 2006, and on July 10, 2006, the parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before July 17, 2006, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The parties shall exchange opening claim construction briefs on August 3, 2006, and the answering claim construction briefs on August 31, 2006.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before November 3, 2006. Expert Discovery in this case shall be initiated so that it will be completed on or before February 8, 2007. (Opening expert reports on issues as to whether a party has the burden of proof are to be served by December 1, 2006 and rebuttal expert reports by January 10, 2007.) The following discovery limits shall apply: 15 fact depositions per side; 50 interrogatories (including subparts) per side; and 50 requests for admission per side.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this Court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). Should the Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party



seeking relief shall file with the Court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers Filed Under Seal.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact United States Magistrate Judge Thyng to schedule a settlement conference with counsel and the clients.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than February 15, 2007. Answering letter briefs shall be no longer than five (5) pages and filed with

the Court no later than March 1, 2007. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before March 8, 2007. The Court shall hold a Status Conference to hear argument and to determine whether the filing of any motion will be permitted on March 16, 2007 at 10:00 a.m. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions.** All case dispositive motions and an opening brief and affidavits, if any, in support of the motion shall be served and filed on or before the later of April 2, 2007 or two weeks following the Court's ruling on whether to permit summary judgment motions. Subsequent briefing will be presented pursuant to the Court's Local Rules, unless the parties agree to an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set forth in this Scheduling Order **must** be accompanied by an explanation or your request will be denied.

10. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

12. **Pretrial Conference.** On September 10, 2007, beginning at 10:00 a.m., the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered

by the Court, the parties should assume that filing the Joint Pretrial Order (a sample form of Pretrial Order can be located on this Court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov)) satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. Motions *in limine*: No party shall file more than ten (10) motions *in limine*. Opening briefs on all motions *in limine* shall be filed by June 21, 2007. Answering briefs on all motions *in limine* shall be filed by July 10, 2007. Reply briefs on all motions *in limine* shall be filed by July 17, 2007. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before 5:00 p.m. on August 13, 2007.

13. **Trial.** This matter is scheduled for a ten (10) day jury trial beginning at 9:00 a.m. on October 9, 2007.

14. **Scheduling.** The parties shall contact Chambers at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel are on the line for purposes of selecting a new date.

---

UNITED STATES DISTRICT JUDGE

## EXHIBIT B

**ABBOTT V. DEXCOM**  
**C.A. No. 05-590 (GMS)**

**DATES FOR SCHEDULING ORDER**

<b>EVENT</b>	<b>DATE</b>
Rule 26(a) Disclosures	March 14, 2006
Reliance Upon Advice of Counsel	Two weeks following Court's claim construction ruling
Joinder of Parties and Amendment of Pleadings	July 14, 2006
Exchange Lists of Disputed Claim Terms	June 26, 2006
Meet and Confer to Narrow Claim Terms	July 10, 2006
Final Joint Claim Chart (with references to intrinsic evidence)	July 17, 2006
Opening Claim Construction Briefs	August 3, 2006
Answering Claim Construction Briefs	August 31, 2006
<i>Markman</i> Claim Construction Hearing	October 24, 2006, 10:00 a.m. (one day)
Close of Fact Discovery	November 3, 2006
Opening Expert Reports	December 1, 2006
Rebuttal Expert Reports	January 10, 2007
Close of Expert Discovery	February 8, 2007
Summary Judgment Letter Briefs	February 15, 2007
Answering Summary Judgment Letter Briefs	March 1, 2007
Reply Summary Judgment Letter Briefs	March 8, 2007
Hearing re: Permission to Move for Summary Judgment	March 16, 2007 10:00 a.m.

EVENT	DATE
Opening Summary Judgment Papers	April 2, 2007, or 2 weeks following the court's ruling on whether to permit summary judgment motions, whichever is later
Answering Summary Judgment Papers	Two weeks following opening briefs
Reply Summary Judgment Papers	One week following answering briefs
Opening In Limine Papers	June 21, 2007
Answering In Limine Papers	July 10, 2007
Reply In Limine Papers	July 17, 2007
Joint Pre-Trial Order	August 13, 2007
Pretrial Conference	September 10, 2007 (10:00 a.m.)
Trial Date (10 days)	October 9, 2007

509101